

42-2-126 - Revocation of license based on administrative determination.

(1) The purposes of this section are:

(a) To provide safety for all persons using the highways of this state by quickly revoking the driver's license of any person who has shown himself or herself to be a safety hazard by driving with an excessive amount of alcohol in his or her body and any person who has refused to submit to an analysis as required by section 42-4-1301 (7);

(b) To guard against the potential for any erroneous deprivation of the driving privilege by providing an opportunity for a full hearing;

(c) Following the revocation period, to prevent the re-licensing of any person until the department is satisfied that such person's alcohol problem is under control and that such person no longer constitutes a safety hazard to other highway users.

(2) (a) The department shall revoke the license of any person upon its determination that the person:

(I) Drove a vehicle in this state when the amount of alcohol, as shown by analysis of the person's blood or breath, in such person's blood was 0.08 or more grams of alcohol per one hundred milliliters of blood or 0.08 or more grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving. If the preponderance of the evidence establishes that such person consumed alcohol between the time that the person stopped driving and the time of testing, the preponderance of the evidence must also establish that the minimum 0.08 blood or breath alcohol content was reached as a result of alcohol consumed before the person stopped driving.

(I.5) Drove a vehicle in this state when such person was under twenty-one years of age and when the amount of alcohol, as shown by analysis of the person's blood or breath, in such person's blood was in excess of 0.05 but less than 0.08 grams of alcohol per one hundred milliliters of blood or in excess of 0.05 but less than 0.08 grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving. If the preponderance of the evidence establishes that such person consumed alcohol between the time that the person stopped driving and the time of testing, the preponderance of the evidence must also establish that the minimum required blood or breath alcohol content was reached as a result of alcohol consumed before the person stopped driving.

(I.7) Drove a vehicle in this state when such person was under twenty-one years of age and when the amount of alcohol, as shown by analysis of the person's breath, subject to section 42-4-1301 (7), in such person's blood was at least 0.02 but not in excess of 0.05 grams of alcohol per one hundred milliliters of blood at the time of driving or within two hours after driving. If the preponderance of the evidence establishes that such person consumed alcohol between the time that the person stopped driving and the time of testing, the preponderance of the evidence must also establish that the minimum 0.02 breath alcohol content was reached as a result of alcohol consumed before the person stopped driving.

(II) Refused to take or to complete, or to cooperate in the completing of, any test or tests of the person's blood, breath, saliva, or urine as required by section 42-4-1301 (7), 18-3-106 (4), or 18-3-205 (4), C.R.S. If a law enforcement officer requests a test under the provisions of section 42-4-1301 (7) (a) (II), the person must cooperate with the request such that the sample of blood or breath can be obtained within two hours of the person's driving.

(III) Drove a commercial motor vehicle in this state when the amount of alcohol, as shown by analysis of such person's blood or breath, in such person's blood was 0.04 or more grams of

alcohol per one hundred milliliters of blood or 0.04 or more grams of alcohol per two hundred ten liters of breath at the time of driving or any time thereafter; or

(IV) Drove a commercial motor vehicle in this state when such person was under twenty-one years of age and when the amount of alcohol in such person's blood, as shown by analysis of such person's breath, subject to section 42-4-1301 (7), was at least 0.02 but less than 0.04 grams of alcohol per two hundred ten liters of breath at the time of driving or any time thereafter.

(b) The department shall make a determination of these facts on the basis of the documents and affidavit of a law enforcement officer as specified in subsection (3) of this section, and this determination shall be final unless a hearing is requested and held as provided in subsection (8) of this section.

(c) The determination of these facts by the department is independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of those criminal charges shall not affect any revocation under this section.

(d) For purposes of this section, "license" includes driving privilege.

(2.5) If the department revokes a person's license pursuant to subparagraph (I), (II), or (III) of paragraph (a) of subsection (2) of this section, the department shall mail a notice to the owner of the motor vehicle used in the violation informing the owner that:

(a) Such motor vehicle was driven in an alcohol-related driving violation; and

(b) Additional alcohol-related violations involving the motor vehicle by the same driver may result in a requirement that the owner file proof of financial responsibility under the provisions of section 42-7-406 (1.5).

(3) (a) Whenever a law enforcement officer has probable cause to believe that a person has violated section 42-4-1301 (2) or whenever a person refuses to take or to complete, or to cooperate with the completing of any test or tests of such person's blood, breath, saliva, or urine as required by section 42-4-1301 (7), the law enforcement officer having such probable cause or requesting such test or tests shall forward to the department an affidavit containing information relevant to legal issues and facts which must be considered by the department to legally determine if a person's driving privilege should be revoked as provided in subsection (2) of this section. The executive director of the department shall specify to law enforcement agencies the form of the affidavit, the types of information needed in the affidavit, and any additional documents or copies of documents needed by the department to make its determination in addition to the affidavit. The affidavit shall be dated, signed, and sworn to by the law enforcement officer under penalty of perjury, but need not be notarized or sworn to before any other person.

(b) A law enforcement officer who has probable cause to believe that a person was driving a commercial motor vehicle with a blood alcohol concentration of 0.04 or more if the person was twenty-one years of age or older or 0.02 or more if the person was under twenty-one years of age shall forward to the department a verified report of all information relevant to the enforcement action, including information that adequately identifies the person, a statement of the officer's probable cause for belief that the person committed such violation, a report of the results of any tests that were conducted, and a copy of the citation and complaint, if any, filed with the court.

(4) (a) Upon receipt of the affidavit of the law enforcement officer and the relevant documents required by subsection (3) of this section, the department shall make the determination described in subsection (2) of this section. The determination shall be based upon the information contained

in the affidavit and the relevant documents. If the department determines that the person is subject to license revocation, the department shall issue a notice of revocation if such notice has not already been served upon the person by the enforcement officer as required in subsection (5) of this section.

(b) The notice of revocation which is sent by the department shall be mailed in accordance with the provisions of section 42-2-119 (2) to the person at the last-known address shown on the department's records, if any, and to any address provided in the law enforcement officer's affidavit if that address differs from the address of record. The notice shall be deemed received three days after mailing.

(c) The notice of revocation shall clearly specify the reason and statutory grounds for the revocation, the effective date of the revocation, the right of the person to request a hearing, the procedure for requesting a hearing, and the date by which that request for a hearing must be made.

(d) If the department determines that the person is not subject to license revocation, the department shall notify the person of its determination and shall rescind any order of revocation served upon the person by the enforcement officer.

(5) (a) (I) Whenever a law enforcement officer requests a person to take any test or tests as required by section 42-4-1301 (7) and such person refuses to take or to complete or to cooperate in the completing of such test or tests or whenever such test results are available to the law enforcement officer and such tests show an alcohol concentration of 0.08 or more grams of alcohol per one hundred milliliters of blood as shown by analysis of such person's blood or 0.08 or more grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath if the person is twenty-one years of age or older or, subject to section 42-4-1301 (7), at least 0.02 but not in excess of 0.05 grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath if the person is under twenty-one years of age and when the person who is tested or who refuses to take or to complete or to cooperate in the completing of any test or tests is still available to the law enforcement officer, the officer, acting on behalf of the department, shall serve the notice of revocation personally on such person.

(II) Whenever a law enforcement officer requests a person who is under twenty-one years of age to take any test or tests as required by section 42-4-1301 (7) and such person refuses to take or to complete or to cooperate in the completing of such test or tests or whenever such test results are available to the law enforcement officer and such tests show an alcohol concentration in excess of 0.05 grams of alcohol per one hundred milliliters of blood as shown by analysis of such person's blood or in excess of 0.05 grams of alcohol per two hundred ten liters of breath as shown by analysis of such person's breath and when the person who is tested or who refuses to take or to complete or to cooperate in the completing of any test or tests is still available to the law enforcement officer, the officer, acting on behalf of the department, shall serve the notice of revocation personally on such person.

(b) When the law enforcement officer serves the notice of revocation, the officer shall take possession of any driver's license issued by this state or any other state which is held by the person. When the officer takes possession of a valid driver's license issued by this state or any other state, the officer, acting on behalf of the department, shall issue a temporary permit which is valid for seven days after its date of issuance.

(c) A copy of the completed notice of revocation form, a copy of any completed temporary permit form, and any driver's, minor driver's, or temporary driver's license or any instruction permit taken into possession under this section shall be forwarded to the department by the officer along with the affidavit and documents required in subsections (2) and (3) of this section.

(d) The department shall provide forms for notice of revocation and for temporary permits to law enforcement agencies. The department shall establish a format for the affidavits required by this section and shall give notice of such format to all law enforcement agencies which submit affidavits to the department. Such law enforcement agencies shall follow the format determined by the department.

(e) A temporary permit may not be issued to any person who is already driving with a temporary permit issued pursuant to paragraph (b) of this subsection (5).

(6) (a) The license revocation shall become effective seven days after the subject person has received the notice of revocation as provided in subsection (5) of this section or is deemed to have received the notice of revocation by mail as provided in subsection (4) of this section. If a written request for a hearing is received by the department within that same seven-day period, the effective date of the revocation shall be stayed until a final order is issued following the hearing; except that any delay in the hearing which is caused or requested by the subject person or counsel representing that person shall not result in a stay of the revocation during the period of delay.

(b) (I) The period of license revocation under subparagraph (I) of paragraph (a) of subsection (2) of this section for a first violation shall be three months.

(II) The period of license revocation under subparagraph (I) of paragraph (a) of subsection (2) of this section for a second or subsequent revocation shall be one year.

(II.5) The period of license revocation under subparagraph (I.5) of paragraph (a) of subsection (2) of this section shall be:

(A) Except as provided in subparagraph (IX) of this paragraph (b), three months for a first violation;

(B) Six months for a second violation; and

(C) One year for a third or subsequent violation.

(III) The period of license revocation under subparagraph (II) of paragraph (a) of subsection (2) of this section or for a first violation under subparagraph (III) of paragraph (a) of subsection (2) of this section shall be one year.

(IV) The period of license revocation under subparagraph (II) or (III) of paragraph (a) of subsection (2) of this section involving a commercial motor vehicle that was transporting hazardous materials as defined in section 42-2-402 (7) shall be no less than three years.

(V) The second or subsequent revocation under subparagraph (II) or (III) of paragraph (a) of subsection (2) of this section involving a commercial motor vehicle shall result in a cancellation or denial as provided for under section 42-2-405 (3).

(VI) The period of license revocation under subparagraph (II) of paragraph (a) of subsection (2) of this section for a second refusal shall be two years.

(VII) The period of license revocation under subparagraph (II) of paragraph (a) of subsection (2) of this section for a third or subsequent refusal shall be three years.

(VIII) The period of license revocation for a violation under subparagraph (IV) of paragraph (a) of subsection (2) shall be:

(A) Except as provided in subparagraph (IX) of this paragraph (b), three months for a first violation;

(B) Six months for a second violation; and

(C) One year for a third or subsequent violation.

(IX) (A) A person whose license is revoked for a first offense under subparagraph (I.5) of paragraph (a) of subsection (2) of this section and whose blood alcohol content was not more than 0.05 grams of alcohol per one hundred milliliters of blood or not more than 0.05 grams of alcohol per two hundred ten liters of breath may request that, in lieu of the three-month revocation, the person's license be revoked for a period of not less than thirty days, to be followed by a suspension period of such length that the total period of revocation and suspension equals three months. If the hearing officer approves such request, the hearing officer may grant such person a probationary license that may be used only for the reasons provided in section 42-2-127 (14) (a).

(B) The hearing to consider a request under sub-subparagraph (A) of this subparagraph (IX) may be held at the same time as the hearing held under subsection (8) of this section; except that a probationary license may not become effective until at least thirty days have elapsed since the beginning of the revocation period.

(c) (I) Where a license is revoked under subparagraph (I), (I.5), (III), or (IV) of paragraph (a) of subsection (2) of this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of section 42-4-1301 (1) (a) or (2), both the revocation under this section and any suspension, revocation, cancellation, or denial which results from such conviction shall be imposed, but the periods shall run concurrently, and the total period of revocation, suspension, cancellation, or denial shall not exceed the longer of the two periods.

(II) Where a license is revoked under subparagraph (II) of paragraph (a) of subsection (2) of this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of section 42-4-1301 (1) (a) or (2), any suspension, revocation, cancellation, or denial which results from such conviction and is imposed shall run consecutively with the revocation under this section.

(III) Any revocation pursuant to this section shall run consecutively and not concurrently with any other revocation pursuant to this section.

(7) (a) The periods of revocation specified by subsection (6) of this section are intended to be minimum periods of revocation for the described conduct. No license shall be restored under any circumstances, and no probationary license shall be issued during the revocation period; except that:

(I) A person whose privilege to drive a commercial motor vehicle has been revoked because the person drove a commercial motor vehicle when the person's blood alcohol content was 0.04 or greater, but less than 0.08, grams of alcohol per one hundred milliliters of blood or per two hundred ten liters of breath and who was twenty-one years of age or older at the time of the offense may apply for a driver's license of another class or type as long as there is no other statutory reason to deny the person a license. Such person may not operate any commercial motor vehicle during the period of revocation of such person's privilege to operate commercial

motor vehicles. The department may not issue such person a probationary license that would authorize such person to operate any commercial motor vehicle.

(II) Repealed.

(b) Upon the expiration of the period of revocation under this section, if the person's license is still suspended or revoked on other grounds, the person may seek a probationary license as authorized by section 42-2-127 (14) subject to the requirements of paragraph (c) of this subsection (7).

(c) (I) Following a license revocation, the department shall not issue a new license or otherwise restore the driving privilege unless it is satisfied, after an investigation of the character, habits, and driving ability of the person, that it will be safe to grant the privilege of driving a motor vehicle on the highways. The department may not require a person to undergo skills or knowledge testing prior to issuance of a new license or restoration of such person's driving privilege if such person's license was revoked for a first violation of driving with excessive alcohol content pursuant to subparagraph (I) of paragraph (b) of subsection (6) of this section.

(II) If the person was determined to be in violation of subparagraph (I) of paragraph (a) of subsection (2) of this section and the person had a blood alcohol level, as shown by analysis of such person's blood or breath, that was 0.20 or more grams of alcohol per one hundred milliliters of blood or 0.20 or more grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving; or if the person's driving record otherwise indicates a designation as a persistent drunk driver as defined in section 42-1-102 (68.5), the department shall require such person to complete a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section 42-4-1301 (10) before driving privileges may be restored.

(III) If the total period of license restraint under this paragraph (c) is not sufficient to allow for the completion of level II alcohol and drug education and treatment, or the documentation of completion of such education and treatment is incomplete at the time of reinstatement, proof of current enrollment in a level II alcohol and drug education and treatment program certified by the division of alcohol and drug abuse pursuant to section 42-4-1301 (10), on a form approved by the department shall be filed with the department.

(8) (a) Any person who has received a notice of revocation may make a written request for a review of the department's determination at a hearing. The request may be made on a form available at each office of the department. If the person's driver's license has not been previously surrendered, it must be surrendered at the time the request for a hearing is made.

(b) The request for a hearing must be made in writing within seven days after the day the person received the notice of revocation as provided in subsection (5) of this section or is deemed to have received the notice by mail as provided in subsection (4) of this section. If written request for a hearing is not received within the seven-day period, the right to a hearing is waived, and the determination of the department which is based upon the documents and affidavit required by subsections (2) and (3) of this section becomes final.

(c) If a written request for a hearing is made after expiration of the seven-day period and if it is accompanied by the applicant's verified statement explaining the failure to make a timely request for a hearing, the department shall receive and consider the request. If the department finds that the person was unable to make a timely request due to lack of actual notice of the revocation or due to factors of physical incapacity such as hospitalization or incarceration, the department shall waive the period of limitation, reopen the matter, and grant the hearing request. In such a case, a

stay of the revocation pending issuance of the final order following the hearing shall not be granted.

(d) At the time the request for a hearing is made, if it appears from the record that the person is the holder of a valid driver's or minor driver's license or any instruction permit issued by this state or temporary permit issued pursuant to subsection (5) of this section and that the license has been surrendered as required pursuant to subsection (5) of this section, the department shall issue a temporary permit which will be valid until the scheduled date for the hearing. If necessary, the department may later issue an additional temporary permit or permits in order to stay the effective date of the revocation until the final order is issued following the hearing, as required by subsection (6) of this section.

(e) (I) The hearing shall be scheduled to be held as quickly as practicable but not more than sixty days after the day that the request for a hearing is received by the department; except that, if a hearing is rescheduled because of the unavailability of a law enforcement officer or the hearing officer in accordance with subparagraph (III) or (IV) of this paragraph (e), the hearing may be rescheduled more than sixty days after the day that the request for the hearing is received by the department, and the department shall continue any temporary driving privileges held by the respondent until the date that such hearing is rescheduled. The department shall provide a written notice of the time and place of the hearing to the party requesting the hearing in the manner provided in section 42-2-119 (2) at least ten days prior to the scheduled or rescheduled hearing, unless the parties agree to waive this requirement. Notwithstanding the provisions of section 42-2-119, the last-known address of the respondent for purposes of notice for any hearing pursuant to this section shall be the address stated on the hearing request form.

(II) The law enforcement officer who submits the documents and affidavit required by subsection (3) of this section need not be present at the hearing unless the presiding hearing officer requires that the law enforcement officer be present and the hearing officer issues a written notice for the law enforcement officer's appearance or unless the respondent or attorney for the respondent determines that the law enforcement officer should be present and serves a timely subpoena upon such officer in accordance with subparagraph (II.5) of this paragraph (e). If the respondent notifies the department in writing at the time that the hearing is requested that the respondent desires the law enforcement officer's presence at the hearing, the department shall issue a written notice for the officer to appear at the hearing. An officer required to appear at a hearing may, at the discretion of the hearing officer, appear in real time by telephone or other electronic means in accordance with section 42-1-218.5.

(II.5) Any subpoena served upon a law enforcement officer for attendance at a hearing conducted pursuant to this section shall be served at least five calendar days before the day of the hearing.

(III) If a law enforcement officer, after receiving a notice or subpoena to appear from either the department or the respondent, is unable to appear at any original or rescheduled hearing date set by the department due to a reasonable conflict, including but not limited to training, vacation, or personal leave time, the officer or the officer's supervisor shall contact the department not less than forty-eight hours prior to the hearing and reschedule the hearing to a time when the officer will be available. If the law enforcement officer cannot appear at any original or rescheduled hearing because of medical reasons, a law enforcement emergency, another court or administrative hearing, or any other legitimate just cause as determined by the department and the officer or the officer's supervisor gives notice of such officer's inability to appear to the department prior to the dismissal of the revocation proceeding, the department shall reschedule the hearing following consultation with the officer or the officer's supervisor at the earliest possible time when the officer and the hearing officer will be available.

(IV) If a hearing officer cannot appear at any original or rescheduled hearing because of medical reasons, a law enforcement emergency, another court or administrative hearing, or any other

legitimate just cause, such hearing officer or the department may reschedule the hearing at the earliest possible time when the law enforcement officer and the hearing officer will be available.

(V) At the time that a respondent requests a hearing, written notice shall be given to the respondent advising such respondent of the right to subpoena the law enforcement officer for the hearing, that such subpoena must be served upon the officer in accordance with subparagraph (II.5) of this paragraph (e), and of the respondent's right, at the time that the respondent requests the hearing, to notify the department in writing that the respondent desires the officer's presence at the hearing, and that, upon such notification, the department shall issue a written notice for the officer to appear at the hearing. The written notice shall also state that, if the law enforcement officer does not appear at the hearing, documents and an affidavit prepared and submitted by the law enforcement officer will be used at the hearing. The written notice shall further state that the affidavit and documents submitted by the law enforcement officer may be reviewed by the respondent prior to the hearing.

(f) If a hearing is held pursuant to this subsection (8), the department shall review the matter and make a final determination on the basis of the documents and affidavit submitted to the department pursuant to subsections (2) and (3) of this section. Except as provided in paragraph (e) of this subsection (8), the law enforcement officer who submitted the affidavit required by subsection (3) of this section need not be present at the hearing. The department shall consider all other relevant evidence at the hearing, including the testimony of law enforcement officers and the reports of such officers which are submitted to the department. The reports of law enforcement officers shall not be required to be made under oath, but such reports shall identify the officers making the reports. The department may consider evidence contained in affidavits from persons other than the respondent, so long as such affidavits include the affiant's home or work address and phone number and are dated, signed, and sworn to by the affiant under penalty of perjury. The affidavit need not be notarized or sworn to before any other person.

(9) (a) The hearing shall be held in the district office nearest to where the violation occurred, unless the parties agree to a different location; except that, at the discretion of the department, all or part of the hearing may be conducted in real time, by telephone or other electronic means in accordance with section 42-1-218.5. The person requesting the hearing may be referred to as the respondent.

(b) The presiding hearing officer shall be the executive director of the department or an authorized representative designated by the executive director. The presiding hearing officer shall have authority to administer oaths and affirmations; to consider the affidavit of the law enforcement officer filing such affidavit as specified in subsection (3) of this section; to consider other law enforcement officers' reports which are submitted to the department, which reports need not be under oath but shall identify the officers making the reports; to examine and consider documents and copies of documents containing relevant evidence; to consider other affidavits which are dated, signed, and sworn to by the affiant under penalty of perjury, which affidavits need not be notarized or sworn to before any other person but shall contain the affiant's home or work address and phone number; to take judicial notice as defined by rule 201 of article II of the Colorado rules of evidence, subject to the provisions of section 24-4-105 (8), C.R.S., which shall include judicial notice of general, technical, or scientific facts within the hearing officer's knowledge, judicial notice of appropriate and reliable scientific and medical information contained in studies, articles, books, and treatises, and judicial notice of charts prepared by the department of public health and environment pertaining to the maximum blood or breath alcohol levels that people can obtain through the consumption of alcohol when such charts are based upon the maximum absorption levels possible of determined amounts of alcohol consumed in relationship to the weight and gender of the person consuming such alcohol; to compel witnesses to testify or produce books, records, or other evidence; to examine witnesses and take testimony; to receive and consider any relevant evidence necessary to properly perform the hearing officer's duties as required by this section; to issue subpoenas duces tecum to produce books, documents, records,

or other evidence; to issue subpoenas for the attendance of witnesses; to take depositions, or cause depositions or interrogatories to be taken; to regulate the course and conduct of the hearing; and to make a final ruling on the issues.

(c) (I) Where a license is revoked under subparagraph (I), (I.5), or (I.7) of paragraph (a) of subsection (2) of this section, the sole issue at the hearing shall be whether, by a preponderance of the evidence, the person drove a vehicle in this state when the amount of alcohol, as shown by analysis of the person's blood or breath, in such person's blood was 0.08 or more grams of alcohol per one hundred milliliters of blood or 0.08 or more grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving if the person was twenty-one years of age or older at the time of driving the vehicle or, subject to section 42-4-1301 (7), at least 0.02 but not in excess of 0.05 grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving if the person was under twenty-one years of age at the time of driving the vehicle, or in excess of 0.05 grams of alcohol per one hundred milliliters of blood or in excess of 0.05 grams of alcohol per two hundred ten liters of breath at the time of driving or within two hours after driving if the person was under twenty-one years of age at the time of driving the vehicle. If the preponderance of the evidence establishes that such person consumed alcohol between the time that the person stopped driving and the time that testing occurred, the preponderance of the evidence must also establish that the minimum 0.08 blood or breath alcohol content required in subparagraph (I) of paragraph (a) of subsection (2) of this section, the minimum 0.05 blood or breath alcohol content required in subparagraph (I.5) of paragraph (a) of subsection (2) of this section, or the minimum 0.02 breath alcohol content required in subparagraph (I.7) of paragraph (a) of subsection (2) of this section was reached as a result of alcohol consumed before the person stopped driving; or, where a license is revoked under subparagraph (II) of paragraph (a) of subsection (2) of this section, whether the person refused to take or to complete or to cooperate in the completing of any test or tests of the person's blood, breath, saliva, or urine as required by section 42-4-1301 (7). If the presiding hearing officer finds the affirmative of the issue, the revocation order shall be sustained. If the presiding hearing officer finds the negative of the issue, the revocation order shall be rescinded.

(II) When the determination of the issue pursuant to this paragraph (c) is based upon an analysis of the respondent's blood or breath and evidence is offered by the respondent to show a disparity between the results of the analysis done on behalf of the law enforcement agency and the results of an analysis done on behalf of the respondent, and when a preponderance of the evidence establishes that the blood analysis conducted on behalf of the law enforcement agency was properly conducted by a qualified person associated with a laboratory certified by the department of public health and environment using properly working testing devices or when a preponderance of the evidence establishes that the law enforcement breath test was administered using a properly working breath testing device certified by the department of public health and environment, which device was properly operated by a qualified operator, there shall be a presumption favoring the accuracy of the analysis done on behalf of the law enforcement agency if such analysis showed the amount of alcohol in the respondent's blood or breath to be 0.12 or more grams of alcohol per hundred milliliters of blood or 0.12 or more grams of alcohol per two hundred ten liters of breath. If the respondent offers evidence of blood or breath analysis, the respondent shall be required to state under oath the number of analyses done in addition to the one offered as evidence and the names of the laboratories that performed the analyses and the results of all analyses.

(III) Where a license is revoked under subparagraph (III) or subparagraph (IV) of paragraph (a) of subsection (2) of this section, the sole issue at the hearing shall be whether, by a preponderance of the evidence, the person drove a commercial motor vehicle in this state when the amount of alcohol, as shown by analysis of the person's blood or breath, in such person's blood was 0.04 or more grams of alcohol per one hundred milliliters of blood or 0.04 or more grams of alcohol per two hundred ten liters of breath at the time of driving or anytime thereafter for a person twenty-one years of age or older or, subject to section 42-4-1301 (7), 0.02 but less than 0.04 grams of

alcohol per two hundred ten liters of breath at the time of driving or anytime thereafter for a person under twenty-one years of age, or 0.04 or more grams of alcohol per one hundred milliliters of blood or 0.04 or more grams of alcohol per two hundred ten liters of breath at the time of driving or anytime thereafter for a person under twenty-one years of age, if the preponderance of the evidence establishes that such person did not consume any alcohol between the time of driving and the time of testing. If the presiding hearing officer finds the affirmative of the issue, the revocation order shall be sustained. If the presiding hearing officer finds the negative of the issue, the revocation order shall be rescinded.

(IV) Under no circumstances shall the presiding hearing officer consider any issue not specified in this paragraph (c).

(d) The hearing shall be recorded. The decision of the presiding hearing officer shall be rendered in writing, and a copy will be provided to the person who requested the hearing.

(e) If the person who requested the hearing fails to appear without just cause, the right to a hearing shall be waived, and the determination of the department which is based upon the documents and affidavit required in subsections (2) and (3) of this section shall become final.

(10) (a) Within thirty days of the issuance of the final determination of the department under this section, a person aggrieved by the determination shall have the right to file a petition for judicial review in the district court in the county of the person's residence.

(b) The review shall be on the record without taking additional testimony. If the court finds that the department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the department's determination.

(c) The filing of a petition for judicial review shall not result in an automatic stay of the revocation order. The court may grant a stay of the order only upon motion and hearing and upon a finding that there is a reasonable probability that the petitioner will prevail upon the merits and that the petitioner will suffer irreparable harm if the order is not stayed.

(11) The "State Administrative Procedure Act", article 4 of title 24, C.R.S., shall apply to this section to the extent it is consistent with subsections (8), (9), and (10) of this section relating to administrative hearings and judicial review.